DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS Petitioner, v. YOUNGIN'S TOWING AND AUTO BODY, INC. Respondent	Case Nos.: CR-C-07-100057 CR-I-07-S70768 Consolidated

ORDER DENYING RECONSIDERATION AND STAY

A Final Order was issued in this case on October 4, 2007, following an evidentiary hearing held on September 13, 2007. In that decision, this administrative court affirmed a Notice to Revoke Respondent's licenses to operate a towing business and towing service storage lot issued by the Department of Consumer and Regulatory Affairs ("DCRA"). The decision found that DCRA proved by a preponderance of the evidence that Respondent committed numerous violations of regulations governing the operation of towing businesses and that these violations authorized the Director of DCRA to revoke Respondent's licenses under the applicable law. [1]

On October 15, 2007, Respondent, by his counsel, filed a Motion for Reconsideration of the Final Order and Stay of Enforcement. DCRA filed an opposition to Respondent's motion on

[1] The reasons that authorize the Director of DCRA to revoke a towing license are set out in 16 DCMR 411.4. In addition to affirming the license revocation, the decision assessed a fine of $1,500 for two violations of the towing regulation and found Respondent not liable for a third violation charged by DCRA.

October 26, 2007. On October 29, 2007, Respondent *pro se* filed a document styled as a supplement to Respondent's original motion for reconsideration. On November 5, 2007, Respondent *pro se* filed an additional document addressed to the Executive Assistant to the Chief Judge, styled as "observations submitted for your review."

The procedural rules of this administrative court require that "any motion for reconsideration of a final order shall be filed within ten (10) days of service of that order." OAH Rule 2832.4. When service is by mail, five days is added to the prescribed period. OAH Rule 2811.5. Respondent's motion for reconsideration filed by counsel on October 15, 2007 was therefore timely filed because the Final Order was served by mail on October 4, 2007.

The procedural rules of this administrative court also provide for motions to relieve a party from a final order. OAH Rule 2833.2. Such motions are to be made within a reasonable period of time, but in no event, more than ninety (90) days after service of the final order. OAH Rule 2833.3. I will construe the documents filed by Respondent *pro se* on October 29, 2007 and November 5, 2007 as motions for relief from a Final Order, that were timely filed within a reasonable period after service of the Final Order.

Reconsideration of a final order is authorized only for "the reasons for which reconsideration have heretofore been granted in the courts of the United States or of the District of Columbia." OAH Rule 2832.1 When considering a motion for reconsideration, District of Columbia courts have looked to D.C. Super. Ct. R. Civ. P. 59 or D.C. Super. Ct. R. Civ. P. 60. *Amatangelo v. Schultz*, 870 A.2d 548 (D.C. 2005). Generally, if the motion seeks reconsideration of an order because of a mistake of fact, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, void or moot judgment, or a

change in circumstances, it is properly considered under Rule 60(b), "but if the movant is seeking relief from the adverse consequences of the original order on the basis of error of law, the motion is properly considered under Rule 59(e)." *Id.* at 553.

Whether I consider any of three motions filed on behalf of Respondent as timely or untimely filed motions for reconsideration under OAH Rule 2832 or motions for relief from a final order under OAH Rule 2833, they do not warrant reconsideration or relief from the Final Order. Reconsideration is not warranted because Respondent has not demonstrated any clear mistake of law or intervening change in law. Relief from the final order is not warranted because Respondent has not demonstrated any mistake of fact, fraud, misrepresentation, or any previously unavailable evidence. *See generally Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993).

I Respondent's Motion filed October 15, 2007

In this motion, Respondent has two principal contentions. First, Respondent contends that in reaching a decision, there was a failure to consider impeachment evidence "clearly indicating the pretextual investigation" conducted by the DCRA Investigator Clement Stokes and his supervisor Kevin Carter. To impeach the credibility of the investigator, Respondent introduced into evidence a court judgment involving an incident that occurred more than fourteen years ago. Respondent's Exhibit "RX" 202 I considered this impeachment evidence in evaluating the credibility of the investigator, but found his testimony credible nevertheless because the impeachment evidence involved an incident that occurred many years ago and because the testimony of the investigator was consistent with the testimony of other witnesses and documentary evidence.

Moreover, the Government presented the testimony of six other witnesses at the hearing and numerous exhibits that were admitted into evidence. The decision found that the Government established eleven of the violations it had charged as a basis for license revocation. Proof of many of those violations was fully established by evidence other than the testimony of the investigator. Thus, even without the testimony of the investigator, there was ample evidence to satisfy the legal criteria in 16 DCMR 411.4 authorizing the Director of DCRA to revoke a license to operate a towing business. [2]

Secondly, Respondent maintains that before issuing the Notice to Revoke on April 27, 2007, DCRA should have afforded Respondent with an opportunity for a hearing. Respondent

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[2] The Director of DCRA is authorized to suspend or revoke the licenses issued under towing regulations for reasons that are set out in 16 DCMR 411.4. The reasons relevant to the facts of this case include the following subparts of the regulation:

> (b) Failure of the licensee to comply with the provisions of this chapter;
>
> (c) Any charges for towing service or storage for public tows made in excess of the charges set forth by the Director;
>
> (h) Failure to compensate vehicle owners for damage to their vehicles caused by, or due to the negligence of, the operators of a tow truck or towing service storage lot, and failure to reasonably secure and protect a towed vehicle and property therein

The Final Order found that there were multiple grounds authorizing the revocation and stated as follows:

> The evidence in this case establishes violations of each of the above provisions. There were multiple violations found of "provisions of this chapter" (Chapter 4 – Towing Service for Motor Vehicles), as discussed above, which provides DCRA with ground for revocation of Respondent's license pursuant to subsection (b). There was also a violation found with respect to a charge for a public tow in excess of that permitted, which provides an independent grounds for revocation under subsection (c) above. Finally, Respondent's failure to compensate GEICO for costs it incurred to compensate its policyholder for the theft of the vehicle that was stolen after it was moved to a public street provides a basis for revocation pursuant to subsection (f).

has not previously raised this issue in this proceeding. Consequently, it can not be considered as a basis for reconsideration or relief from the Final Order.

II. Respondent's Motion filed October 29, 2007

Respondent's principal contention in this motion is that the determination in the decision that Respondent violated 16 DCMR 408.1 by overcharging Leroy Atkins was erroneous, because when discussing another violation involving Mr. Atkins, the decision found that Mr. Atkins was not the owner of the vehicle.

Respondent has misread the decision. The decision did not find that Mr. Atkins did not own the vehicle. Rather the decision dismissed one of the three violations charged involving Mr. Atkins because the evidence did not establish that Respondent refused to promptly release the vehicle to Mr. Atkins after Mr. Atkins made payment and presented of proof of identity, as required by 16 DCMR 408.7. Specifically the decision said:

> To establish a violation of this regulation, the Government must prove that there was a failure to promptly release the vehicle after: (1) payment was made, and (2) proof of identify provided. Mr. Atkins testified that he had not made payment when Respondent told him to leave and call the police. He further testified that the car was released to him after he made payment. In addition, there is no evidence establishing that Mr. Atkins had presented proof of identity and ownership. Under these circumstances, a necessary element of the offense has not been established and the Government has not met its burden of proving a violation by a preponderance of the evidence. Pp. 18-19.

In context, it is clear that the decision did not find that Mr. Atkins did not own the vehicle. Rather, it found that the Government had not proved a violation of the regulation because the Government had not shown there was a refusal to release the vehicle after Mr. Atkins presented proof of identity and made payment.

In any event, proof of a violation of the regulation that sets maximum rates for public tows does not require evidence that it was the owner who was overcharged. *See* 16 DCMR 408.1 Charges exceeding the maximum rates are prohibited no matter who is overcharged.

III. Respondent's Motion filed November 5, 2007

In this motion, Respondent repeats claims that the overcharge violation was not established because there was not proof that Mr. Atkins was the owner of the vehicle and that the testimony of the investigator was not credible because of impeachment evidence introduced by Respondent. For the reasons given above, those contentions are rejected.

In addition, Respondent makes a new claim. Respondent contends that Respondent can not be found in violation for overcharging Mr. Atkins because Mr. Atkins had not paid his parking ticket before he came to Respondent's storage lot to reclaim his vehicle. Respondent then cites a passage, which according to Respondent appears in the "Owner's Bill of Rights for Towed Vehicles," stating that proof of payment for the parking violation should be taken to the tow facility when a vehicle is reclaimed.

Respondent has not previously raised this issue and it can not be addressed for the first time on reconsideration. Even if it had been previously raised, failing to pay a parking ticket would not provide a defense to a charge against a towing company for exceeding the maximum rates for a public tow in violation of 16 DCMR 408.1. Overcharges by towing companies are prohibited whether or not the District has already been paid for the parking ticket.

To the extent that there are other points raised by Respondent in its requests for reconsideration or relief from the Final Order that are not specifically addressed herein, this

administrative court has considered and rejected these points. As Respondent's requests do not sufficiently demonstrate any of the grounds necessary for granting reconsideration or other relief, Respondent's three motions are denied.

IV. Denial of Stay

In its motion filed October 15, 2007, Respondent requested a stay of the enforcement of the Final Order. The factors to be considered in exercising discretion to issue a stay pending appeal are set out in OAH Rule 2835.2. It states:

> In determining whether to grant a stay, this administrative court shall assess whether the movant is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether and to what degree granting the stay will harm other parties, and whether the public interest favors granting a stay.

These are the same four factors considered by the courts. The Court of Appeals has held that an administrative judge considering a stay application must apply the same standard applied by the courts, which requires a balancing of these four factors. *Kuflom v. District of Columbia Bureau of Motor Vehicle Services*, 543 A. 2d 340, 344 (D.C. 1988). If the other three factors strongly favor granting a stay, the moving party need not show a "mathematical probability" of success on the merits; only a "substantial" showing of likely success is required. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), *quoting Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.,* 559 F. 2d 841, 843 (D.C. Cir. 1977). The court in *Washington Metropolitan Transit Commission* explained that, in considering the "likelihood of success" factor a court need not make "a prediction that it has rendered an erroneous decision" before staying its order. *Id.* at 844. "What is fairly contemplated is that tribunals may properly stay their own orders when they have ruled on an admittedly difficult legal question and when

the equities of the case suggest that the status quo should be maintained." *Id.* at 844-45. *See* also *DOH v. Kennedy Center*, 2001 D.C. Off. Adj. Hear. LEXIS 71,*2. (Order, August 8, 2001).

Respondent's request for a stay will now be evaluated in light of these factors.

A. **Likelihood of Success on the Merits**

Respondent has disputed a credibility determination with respect to one witness, but has cited no other evidence that would overcome factual findings based on the testimony of numerous witnesses and documents admitted into evidence. In addition, Respondent does not cite any case law or other authority supporting its claims of legal error. Respondent's motions thus do not present difficult legal questions.

B. Irreparable Harm

The sole reason Respondent advances in seeking the stay is that Respondent's towing business has been closed, creating unreasonable and undue hardship. While closure of a business can certainly create irreparable harm, the Final Order does not alter the status quo because the business was already curtailed. As stated in a motion filed by Respondent, Respondent had voluntarily ceased towing vehicles identified by the Department of Public works pursuant to a Temporary Restraining Order issued on D.C Superior Court on July 26, 2007 with the agreement of Respondent and the Office of the Attorney General until the resolution of this administrative case. Denial of the stay will therefore not alter the status quo.

C. Harm to the Opposing Party

In seeking the stay, Respondent does not discuss potential harm to the opposing party, which in this case is DCRA. DCRA's interest in prompt revocation of the licenses of towing business who have engaged in numerous violations of towing regulations will be adversely affected if a stay is granted.

D. The Public Interest

Respondent has also made no showing that the public interest favors a stay. In fact, the public interest may be harmed if Respondent continues operates as a licensed towing business pending appeal in light of the demonstrated pattern of misconduct shown by the record in this case.

E. Conclusion

When these four governing legal factors are balanced, Respondent has not stated grounds or reasons warranting a stay of the Final Order. *See DOH v. Lester*, OAH No. I-02-42012 at 2-3 (Order, November 20, 2002) (it is movant's obligation to justify the "extraordinary remedy" of a stay, which will not be granted if movant has not made the required showings). Respondent's request for a stay will therefore be denied. D.C. Official Code § 2-1802.03(g).

IV. Order

Based upon the foregoing discussion and the entire record in this matter, it is, this 14th day of November, 2007:

ORDERED, that Respondent's motions filed October 15, October 29, and November 5, 2007 are **DENIED**; and it is further

ORDERED, that Respondent's motion for stay pending appeal is **DENIED**

November 14, 2007

__/s/_____
Mary Masulla
Administrative Law Judge